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Honorable Lonny R. Suko

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

STEPHEN R. POWELL, Plaintiff, v. COLLECTO, INC., Defendant.	NO. 12-CV-477-LRS PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT 06/13/2013 WITHOUT ORAL ARGUMENT

FACTS

Plaintiff filed the required statement of material facts. By way of summary, the Defendant attempted to collect an old phone bill from the Plaintiff in Spokane County Washington. In the process of collecting the debt, the Defendant provided false information to a third party. Plaintiff attempted to contact the Defendant to remedy the situation, and the Defendant continued providing false information to

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the Consumer Reporting Agencies.

ANALYSIS

A matter is ripe for summary judgment when there are no issues of material fact and the moving party is entitled to judgment as a matter of law. The court must determine, viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and then apply the relevant substantive law. *Federal Rules of Civil Procedure 56(c)*; *Bianchi v. Walker*, 163 F.3d 564, (9th Cir., 1998); *Parker v. United States*, 110 F.3d 678, 681 (9th Cir.1997). This matter is ripe for summary judgment because the facts surrounding the defendant's collection activities demonstrate a violation of the Fair Debt Collection Practices Act.

I. THE FDCPA APPLIES TO THE DEFENDANT'S COLLECTION ACTIVITIES.

The Fair Debt Collection Practices Act applies to "debt collectors" collecting consumer "debts" from "consumers." Each of these terms are defined by the FDCPA.

A. THE DEFENDANT IS A DEBT COLLECTOR.

Debt Collector is a term is defined by the Act:

> The term "debt collector" means any person who uses any

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> instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

15 U.S.C. § 1692a(6).

It is undisputed that the defendant in this matter regularly collects and attempts to collect debts on behalf of third parties. The Defendant is licensed as an out-of-state collection agency. The Defendant sent a letter to the Plaintiff in Washington. The Defendant negotiated with the Plaintiff to resolve a debt for an old phone bill. All of these facts are undisputed and prove that the Defendant is a debt collector.

B. DEFENDANT WAS ATTEMPTING TO COLLECT A CONSUMER DEBT.

The FDCPA defines consumer debt as follows:

> The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

15 U. S. C. § 1692a(5).

In this matter, the defendant was attempting to collect a phone bill. This debt was incurred for personal purposes. Courts have widely recognized utility

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bills as consumer debts. *Piper v. Portnoff Law Assocs., Ltd*, 396 F3d 227 (3rd Cir. 2005); *Pollice v. National Tax Funding, L.P.*, 225 F.3d (3rd Cir. 2000). It is beyond dispute that the Defendant was attempting to collect consumer debt, as that term is defined by the Fair Debt Collection Practices Act.

C. THE PLAINTIFF IS A CONSUMER.

The term "consumer" is defined as "any natural person obligated or allegedly obligated to pay any debt." 15 U. S. C. § 1692(3). The plaintiff is an individual, i.e. not a corporation, and he was obligated to pay the debt which the defendant was attempting to collect.

Having established the application of the FDCPA as a matter of law, the Defendant is obligated to follow it. If it does not, it is subject to liability.

It should also be noted that there is no issue of intent, bad faith or negligence. "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." *Russell v. Equifax A.R.S.*, 74 F.3d 30, 33 (2d Cir. 1996), Also, see: *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 62 (2nd Cir. 1993). The "FDCPA is a strict liability statute," and "proof of one violation is sufficient to support summary judgment for the plaintiff." *Cacace v. Lucas*, 775 F.Supp. 502, 505 (D.Conn. 1990).

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II. THE DEFENDANT USED FALSE STATEMENTS IN AN ATTEMPT TO COLLECT A DEBT.

The FDCPA prohibits the use of false and deceptive means in the collection of a debt.

> A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
>
> (2) The false representation of--
>
> (A) the character, amount, or legal status of any debt; or
> (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

15 U. S. C. § 1692e (2).

In this matter, the plaintiff had reached a settlement with the defendant whereby his consumer debt was compromised and the compromised amount was paid in full. It is undisputed that the defendant continued to report a balance owed after the account had been paid in full. Statement that a balance was due on the account falsely represents the character, amount, and legal status of the debt. Plaintiff has established a violation of the foregoing section.

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III. THE DEFENDANT SUPPLIED FALSE INFORMATION TO THIRD PARTIES .

The FDCPA prohibits the following activity:

> A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
>
> . . . .
>
> (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

15 U. S. C. § 1692e (8).

The undisputed facts indicate that the defendant communicated with the Consumer Reporting Agencies information which was false. After the plaintiff had paid the compromised amount on the debt and received a letter indicating that the debt was paid in full, the defendant continued to report that there was a balance due on the debt. This reporting is a false statement made to a third-party in an attempt to collect a debt. It is also a violation of the Fair Debt Collection Practices Act.

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IV. DEFENDANT VIOLATED THE WASHINGTON COLLECTION AGENCY ACT.

In Washington, collection agencies are governed by the Washington Collection Agency Act (CAA). The plaintiff is already established that the defendant holds an out-of-state collection agency license. RCW 19.16.250 provides as follows:

> No licensee or employee of a licensee shall: . . .
>
> > (22) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, except as noted in subsection (21) of this section, and, in the case of suit, attorney's fees and taxable court costs.

RCW 19.16.250.

In this matter, it is undisputed that the plaintiff and defendant had agreed to a compromised amount of $450, which the plaintiff paid in full. The defendant then attempted to collect the remaining balance, when it refused to update the plaintiffs credit information which was being reported to the Consumer Reporting Agencies. This action violates the foregoing section of RCW 19.16.250.

CONCLUSION

There are no issues of fact as to the Defendant's status as a debt collector, as

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to the status of the debt and the status of the Plaintiff as a consumer. The Plaintiff has presented undisputable evidence to reasonably conclude that the Defendant violated the FDCPA and the CAA. The Plaintiff's motion should be granted.

Dated: April 23, 2013

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CERTIFICATE OF SERVICE

I, Timothy W. Durkop, certify that on the date set out below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF filing system which will automatically send notice of the filing of this document to the following registered CM/ECF participants:

Melissa O'Loughlin White
Cozen OConnor . . . . mwhite@cozen.com
For Collecto Inc, Defendant

Signed on April 23, 2013.

/s/ Timothy W. Durkop

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